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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-548

11 **TERRY MICHAEL RESCOLA**
12 **1323 Balboa Street**
13 **San Luis Obispo, CA 93405**

DEFAULT DECISION AND ORDER

14 **Registered Nurse License No. 578455**

[Gov. Code, §11520]

15 Respondent.

16 **FINDINGS OF FACT**

17 1. On or about March 15, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
18 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
19 of Consumer Affairs, filed Accusation No. 2012-548 against Terry Michael Rescola (Respondent)
20 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

21 2. On or about March 12, 2001, the Board of Registered Nursing (Board) issued
22 Registered Nurse License No. 578455 to Respondent. The Registered Nurse License was in full
23 force and effect at all times relevant to the charges brought in Accusation No. 2012-548 and will
24 expire on October 31, 2012, unless renewed.

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1 3. On or about March 15, 2012, Respondent was served by First Class Mail copies of
2 the Accusation No. 2012-548, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
5 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
6 of record was and is:

7 1323 Balboa Street
8 San Luis Obispo, CA 93405

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c), and/or Business & Professions Code section
11 124.

12 5. A signed certified mail return receipt was received by the Board on March 21, 2012.
13 None of the aforementioned documents were returned by the U.S. Postal Service.

14 6. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 2012-548.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 2012-548, finds
2 that the charges and allegations in Accusation No. 2012-548, are separately and severally, found
3 to be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$10,869.00 as of April 19, 2012.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Terry Michael Rescola has
9 subjected his Registered Nurse License No. 578455 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
12 Nurse License based upon the following violations alleged in the Accusation which are supported
13 by the evidence contained in the Default Decision Evidence Packet in this case:

14 a. Respondent is subject to disciplinary action under sections 2761, subdivision (f), and
15 490, in conjunction with California Code of Regulations, title 16, section 1444, in that
16 Respondent has been convicted of a crime substantially related to the qualifications, functions,
17 and duties of a registered nurse. On or about May 3, 2005, after pleading nolo contendere,
18 Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23103,
19 subdivision (a), pursuant to Vehicle Code section 23103.5, [wet reckless driving] in the criminal
20 proceeding entitled The People of the State of California v. Terry Michael Rescola (Super. Ct.
21 San Luis Obispo County, 2005, No. M000368789). While at the scene, he submitted to a
22 Preliminary Alcohol Screening Test (PAS) that resulted in a breath-alcohol content level of
23 0.15% on the first reading and 0.15% on the second reading. The Court placed Respondent on 2
24 years probation, with terms and conditions, including completion of a Wet Reckless Program and
25 DUI First Offender program;

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1 b. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
2 defined in section 2762, subdivision (a), in that on or about February 2, 2010, Respondent
3 illegally obtained or possessed a controlled substance. On or about February 1, 2010, Respondent
4 presented himself to the Maxim Staffing Solutions also known as Maxim Nursing Registry
5 (MNR), in Arroyo Grande, CA and applied as a registered nurse to be placed on their registry.
6 On or about February 2, 2010, Respondent provided a required urine sample for a drug screen to
7 MNR through Qualisys. The urine sample he provided tested positive for Marijuana;

8 c. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
9 defined in section 2762, subdivision (b), in that Respondent used alcoholic beverages and
10 controlled substances to an extent or in a manner dangerous or injurious to himself, another
11 person, or the public when on or about February 2, 2010, Respondent tested positive to marijuana
12 and on or about February 5, 2005, when Respondent drove a vehicle upon a highway in a willful
13 or wanton disregard for the safety of persons or property and while having approximately 0.15%,
14 by weight, of alcohol in his blood;

15 d. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
16 defined in section 2762, subdivision (c), in that on or about May 3, 2005, Respondent was
17 convicted of a crime involving the consumption of alcohol.

18 DISCIPLINARY CONSIDERATIONS

19 21. The following convictions further support imposition of discipline on Respondent:

20 a. On or about March 2, 1990, Respondent was convicted of one misdemeanor count of
21 violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or
22 drugs], one count of Vehicle Code section 23152, subdivision (b) [driving while having 0.08%,
23 and more, by weight, of alcohol in his blood], and one count of Vehicle Code section 14601.1,
24 subdivision (a) [driving while driving privilege is suspended and revoked] in the criminal
25 proceeding entitled *The People of the State of California v. Terry Michael Rescola* (Super. Ct.
26 San Luis Obispo County, 1990, No. M153093). The circumstances surrounding the conviction
27 are that on or about February 25, 1990, Respondent drove a vehicle while under the influence of
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1 alcohol or drugs, while having 0.08%, and more, by weight, of alcohol in his blood, and while his
2 driving privilege was suspended and revoked.

3 b. On or about December 6, 1989, Respondent was convicted of one misdemeanor count
4 of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol
5 or drugs] in the criminal proceeding entitled *The People of the State of California v. Terry*
6 *Michael Rescola* (Super. Ct. San Luis Obispo County, 1989, No. M148211). The circumstances
7 surrounding the conviction are that on or about November 2, 1989, Respondent drove a vehicle
8 while under the influence of alcohol or drugs.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED July 6, 2012

51096051.DOC
DOJ Matter ID: LA2011601543

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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Supervising Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **TERRY MICHAEL RESCOLA**
14 1323 Balboa Street
San Luis Obispo, CA 93405

15 Registered Nurse License No. 578455

Respondent.

Case No. 2012-548

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about March 12, 2001, the Board of Registered Nursing (Board) issued
22 Registered Nurse License No. 578455 to Terry Michael Rescola (Respondent). The Registered
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and
24 will expire on October 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 2761 states, in pertinent part:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

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1 7. Section 2762 states, in pertinent part:

2 "In addition to other acts constituting unprofessional conduct within the meaning of this
3 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
4 chapter to do any of the following:

5 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
6 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
7 administer to another, any controlled substance as defined in Division 10 (commencing with
8 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
9 defined in Section 4022.

10 (b) Use any controlled substance as defined in Division 10 (commencing with Section
11 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
12 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
13 himself or herself, any other person, or the public or to the extent that such use impairs his or her
14 ability to conduct with safety to the public the practice authorized by his or her license.

15 (c) Be convicted of a criminal offense involving the prescription, consumption, or self-
16 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
17 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
18 of this section, in which event the record of the conviction is conclusive evidence thereof."

19 8. Section 2764 provides, in pertinent part, that the expiration of a license shall not
20 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
21 to render a decision imposing discipline on the license.

22 REGULATORY PROVISIONS

23 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

24 "A conviction or act shall be considered to be substantially related to the qualifications,
25 functions or duties of a registered nurse if to a substantial degree it evidences the present or
26 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
27 safety, or welfare."

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COST RECOVERY

10. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11. **CONTROLLED SUBSTANCE**

"Marijuana," is a scheduled I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to section 4022.

FACTUAL BACKGROUND

12. On or about February 1, 2010, Respondent presented himself to the Maxim Nursing Registry (MNR), in Arroyo Grande, CA and applied as a registered nurse to be placed on their registry.

13. On or about February 2, 2010, Respondent provided a required urine sample for a drug screen to MNR. He was advised, a short time later, by the registry personnel that the urine sample he provided tested positive for Marijuana.

14. On or about February 4, 2010, the Board received a complaint from MNR indicating that Respondent testing positive for Marijuana in their drug screen.

15. On or about February 3, 2011, during an interview with a Board investigator, Respondent admitted that he used Marijuana to relieve the nausea caused by the cancer radiation treatments he received for his nose. When asked if he obtained a "Prop 215" card that would allow him to legally possess and use marijuana in CA, Respondent admitted that he had not done so.

16. On or about February 4, 2011, Respondent wrote a letter to the Board and admitted to his usage of Marijuana and the circumstances for his use.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Illegally Obtained or Possessed a Controlled Substance)**

3 18. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
4 defined in section 2762, subdivision (a), in that on or about February 2, 2010, Respondent
5 illegally obtained or possessed a controlled substance. Complainant refers to, and by this
6 reference incorporates, the allegations set forth above in paragraphs 12 through 16, inclusive, as
7 though set forth fully.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcoholic Beverages and Controlled Substances)**

10 19. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
11 defined in section 2762, subdivision (b), in that Respondent used alcoholic beverages and
12 controlled substances to an extent or in a manner dangerous or injurious to herself, another
13 person, or the public, as follows:

14 a. On or about February 2, 2010, Respondent used a controlled substance to an extent or
15 in a manner dangerous or injurious to himself, another person, or the public. Complainant refers
16 to, and by this reference incorporates, the allegations set forth above in paragraphs 12 through 16,
17 inclusive, as though set forth fully.

18 b. On or about February 5, 2005, Respondent drove a vehicle upon a highway in a
19 willful or wanton disregard for the safety of persons or property and while having approximately
20 0.15%, by weight, of alcohol in his blood. Complainant refers to, and by this reference
21 incorporates, the allegations set forth above in paragraph 17, as though set forth fully.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Conviction Involving the Consumption of Alcohol)**

24 20. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
25 defined in section 2762, subdivision (c), in that on or about May 3, 2005, Respondent was
26 convicted of a crime involving the consumption of alcohol. Complainant refers to, and by this
27 reference incorporates, the allegations set forth above in paragraph 17 inclusive, as though set
28 forth fully.

DISCIPLINARY CONSIDERATIONS

21. In order to determine the degree of discipline, if any to be imposed on Respondent, Complainant alleges, as follows:

a. On or about March 2, 1990, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or drugs], one count of Vehicle Code section 23152, subdivision (b) [driving while having 0.08%, and more, by weight, of alcohol in his blood], and one count of Vehicle Code section 14601.1, subdivision (a) [driving while driving privilege is suspended and revoked] in the criminal proceeding entitled *The People of the State of California v. Terry Michael Rescola* (Super. Ct. San Luis Obispo County, 1990, No. M153093). The circumstances surrounding the conviction are that on or about February 25, 1990, Respondent drove a vehicle while under the influence of alcohol or drugs, while having 0.08%, and more, by weight, of alcohol in his blood, and while his driving privilege was suspended and revoked.

b. On or about December 6, 1989, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the State of California v. Terry Michael Rescola* (Super. Ct. San Luis Obispo County, 1989, No. M148211). The circumstances surrounding the conviction are that on or about November 2, 1989, Respondent drove a vehicle while under the influence of alcohol or drugs.

c. On or about December 6, 1984, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.2 [driving while driving privilege is suspended and revoked with knowledge] in the criminal proceeding entitled *The People of the State of California v. Terry Michael Rescola* (Super. Ct. San Luis Obispo County, 1984, No. M78671). The circumstances surrounding the conviction are that on or about October 25, 1984, Respondent drove a vehicle while his driving privilege was suspended and revoked with knowledge of the suspension and revocation.

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1 d. On or about July 19, 1984, Respondent was convicted of one misdemeanor count of
2 violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or
3 drugs] in the criminal proceeding entitled *The People of the State of California v. Terry Michael*
4 *Rescola* (Super. Ct. San Luis Obispo County, 1984, No. M73721). The circumstances
5 surrounding the conviction are that on or about May 15, 1984, Respondent drove a vehicle while
6 under the influence of alcohol or drugs.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 578455, issued to Terry
11 Michael Rescola

12 2. Ordering Terry Michael Rescola to pay the Board of Registered Nursing the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3; and

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: March 15, 2012

17 *for* LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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